

PLANNING COMMISSION RESOLUTION NO. 2008-261

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWBERG
RECOMMENDING THAT THE CITY COUNCIL AMEND THE MUNICIPAL CODE TO
REQUIRE AN ECONOMIC IMPACT ASSESSMENT REPORT AND TO AMEND THE
DEVELOPMENT CODE TO REQUIRE AN ABANDONED BUILDING SURETY
AGREEMENT, AND ENVIRONMENTALLY BENEFICIAL BUILDING AND DESIGN
PRACTICES FOR LARGE SCALE RETAIL DEVELOPMENT SITES**

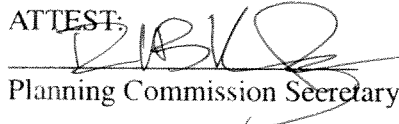
RECITALS:

1. Due to the typical scale, site design, and traffic generation large-scale retail developments can have a negative effect on the local environment. Large scale development can disproportionately affect local air quality and temperature, storm water quality, energy supply, waste system, water supply, and natural resources.
2. Vacant large-scale retail development sites can be neglected and become visually unpleasing. Vacant and visually unpleasing sites can be attractive for criminal activity and have negative economic effects on surrounding businesses.
3. Large-scale retail developments can have a negative effect on local municipal finances due to their proportionally greater use of police and emergency services, transportation infrastructure, and the wastewater, storm water, and water systems.
4. On, February 20, 2007, the Newberg City Council adopted Resolution 2007-2701, initiating amendments to the Development Code to address issues associated with large scale retail development.
5. On January 8, 2009 the Newberg Planning Commission held a public hearing to consider the proposed amendments.

NOW THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Newberg that it recommends that the City Council approve the amendments to the Newberg Development Code as shown in Exhibit "1". This recommendation is based on the staff report and the findings in Exhibit "2", and testimony.

DATED this 8th day of January, 2009.

AYES: 7 NAYS: 0 ABSTAIN: 0 ABSENT: 0

ATTEST:

Planning Commission Secretary


Planning Commission Chair

EXHIBITS
Exhibit 1: Development Code and Municipal Code Text Amendments
Exhibit 2: Findings

Exhibit A to Resolution 2008-261
Potential Development Code amendments

Note: Existing text is shown in regular font.
Added text is shown in double-underline
Deleted text is shown in ~~striketrough~~.

Section 1: Newberg Development Code § 151.196 shall be amended as follows:

§ 151.196 ADDITIONAL REQUIREMENTS FOR DEVELOPMENT IN THE C-2 ZONING DISTRICT.

The purpose of this section is to ensure that development in the C-2 Zoning District is designed to promote pedestrian and bicycle uses and improve aesthetics and compatibility. An applicant for a new development or redevelopment within the C-2 Zoning District, which is subject to the Site Design Review process, must demonstrate that the following site and building design elements have been incorporated into the design of the project. Exceptions to these additional development requirements may be granted if the requirements would result in construction that is out of character with surrounding development. Applicants for redevelopment of a designated landmark will not be subject to these additional requirements, except for requirements regarding parking and service drives.

(A) *Building entrances.* Each building on a lot shall have a primary pedestrian entrance oriented to the primary street. "Oriented to a street" means that the building entrance faces the street or is connected to the street by a direct and convenient pathway not exceeding 60 feet in length. "Primary street" means the street which has the highest estimated volume of pedestrian traffic. This requirement does not apply to buildings that are located behind other buildings on the lot such that 50% or more of their building frontage is blocked by the front building, as measured by sight lines that are perpendicular to the street right-of-way. Such rear buildings shall have a primary entrance oriented to an internal sidewalk or pedestrian pathway system which is internally connected and provides a connection to the primary street.

(B) *Parking and service drives.* No off-street parking or service drives shall be placed within the required front yard setback. No off-street parking shall be placed between the front property line of the primary street, as defined in division (A) above, and the building. This requirement does not apply to buildings that are located behind other buildings on the lot such that 50% or more of their building frontage is blocked by the front building, as measured by sight lines that are perpendicular to the street right-of-way.

(C) *Exceptions.* The review body may approve exceptions to the above provided there are no reasonable alternatives that would allow access to or parking on the lot.

(D) *Building mass.* Where building elevations are oriented to the street in conformance with (A) above, architectural features such as windows, pedestrian entrances, building off-sets, projections, detailing, change in materials or similar features, shall be used to break up and articulate large building surfaces and volumes.

(E) *Corner lots.* Buildings on corner lots shall have their primary entrance oriented to the street corner, or within 40 feet of the street corner (i.e., as measured from the lot corner). In this case, the street corner shall provide an extra-wide sidewalk or plaza area with landscaping, seating or other pedestrian amenities. The building corner shall provide architectural detailing or beveling to add visual interest to the corner.

(F) *Pedestrian-scale building entrances.* Recessed entries, canopies, and/or similar features shall be used at the entries to buildings in order to create a pedestrian-scale.

(G) *Windows.*

(1) On commercial building facades facing a public street, windows shall comprise a minimum of 40% of the ground floor facade. For large-scale buildings and developments meeting the standards under subsection (H) below, windows shall comprise a minimum of 20% of the ground floor facade.

(2) For large-scale buildings and developments meeting the standards under subsection (H) below, 50% of all required window area shall allow view into an active space. An active space is defined as any area within a building that is used for shopping, dining, office space, and so forth. Merchandise display windows with displays that change at least semi-annually shall be considered an active space. Examples of areas that are considered non-active spaces are storage and mechanical equipment areas, and windows that are obscured by shelving or material affixed to the window.

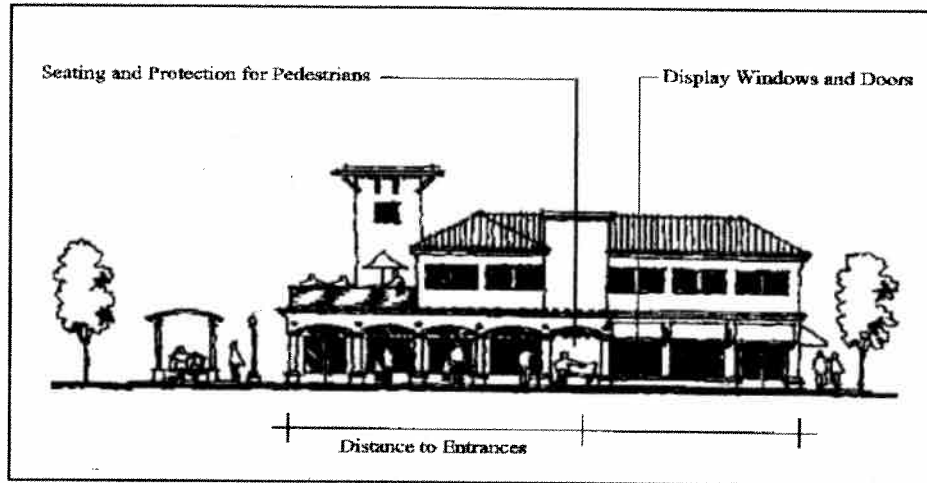
(H) *Design of large-scale buildings and developments.* All buildings on a development site shall conform to the design standards included under § 151.196 (H) where the total square footage of one commercial building exceeds 30,000 square feet of total ground floor area *or* all commercial buildings exceed 50,000 square feet of total ground floor area. Deviations from these standards may be approved, where appropriate, through the conditional use permit process.

(1) *Facade articulation.* Incorporate changes in building direction (i.e., articulation), and divide large masses into varying heights and sizes. Such changes may include building offsets; projections; changes in elevation or horizontal direction; sheltering roofs; terraces; a distinct pattern of divisions in surface materials; and use of windows, screening trees; small-scale lighting (e.g., wall-mounted lighting); and similar features. At least five of the following elements shall be included along each 100 feet of building frontage facing a street:

- (a) A building offset or projection of at least 6 feet depth and width.
- (b) An awning or roof sheltering a pedestrian walkway or seating area.
- (c) A building facade shall be comprised of at least two building materials, with the lesser comprising not less than 10% of the total facade.
- (d) Contrasting brick, stone, or natural wood trim.
- (e) Pitched roofs or gable-end roofs.
- (f) Curved arches or roof line features.
- (g) A tower, spire, or cupola.
- (h) A cornice.
- (i) Second story windows that comprise a minimum of 10 percent of the second floor

façade.

[Note: the example shown here is meant to illustrate these building design elements, and should not be interpreted as a required architectural style.]



(2) *Pedestrian entrance.* Every building elevation facing a street with a horizontal dimension of more than 100 feet, as measured from end-wall to end-wall, shall have a building entrance no more than 100 feet from another entrance or end-wall; except that buildings elevations that are unable to provide an entrance due to the internal function of the building space (e.g., mechanical equipment, areas where the public or employees are not received, etc.) may not be required to meet this standard. Pathways shall connect all entrances to the street right-of-way.

(3) *Building facades not fronting a street.* For all ground floor facades that do not face a public street, windows shall comprise a minimum of 20 % of the ground floor façade or a landscape strip shall be provided adjacent to the building. The landscape strip shall be a minimum of 5 feet in width and include a combination of trees, shrubs, and groundcover or grass. Plant material shall be selected from at least two of the different plant material groups (example: trees and shrubs, or lawn and shrubs, or lawn and trees and shrubs). The type of tree selected shall have a crown of less than 15 feet at maturity. Exceptions to this standard include building facades that abut outdoor storage areas, loading docks, and mechanical equipment areas.

(4) *Building orientation.* All buildings shall be oriented to a primary street as defined in division (A) or oriented to a plaza or open space within the development site that connects to the primary street. "Oriented to a plaza or open space" means that the building entrance faces the plaza, open space, shared parking area or is connected to the plaza by a direct and convenient pathway not exceeding 60 feet in length.

(5) *On-site landscaping and screening.*

(a) A continuous landscape strip, with a five foot minimum width, shall be located perpendicular to groups of 2 or more parking stalls. Within the landscape strip, at a

minimum, one deciduous shade tree per seven parking spaces shall be planted to create a partial tree canopy over and around the parking area. The type of tree shall be chosen from the City of Newberg Preferred Street Tree List and have a minimum crown spread of 25 feet. This standard shall apply unless otherwise approved by the Director based on the following alternative standards:

1. No more than seven parking stalls shall be grouped together without a landscape island. The landscape island shall have a width and depth no less than 5 feet and contain no less than one deciduous shade tree.

or

2. Provision of tree planting landscape islands, each of which is at least 16 square feet in size, and spaced no more than 50 feet apart on average, with a maximum of 75 feet, within areas proposed for grouped parking. For every 7 planting landscape islands, 1 shall be no less than 500 square feet in size.

(b) At a minimum 50 percent of the parking area shall drain to a storm water mitigation area. The mitigation area shall be designed using best management storm water practices including, but not limited to, bio-swales, rain gardens, or similar design intended to reduce storm water flow and improve storm water quality.

(c) A 20-foot wide landscaped buffer shall be provided between the development and any adjoining residential district. The buffer shall include a continuous 6-foot high sight-obscuring fence or wall, a continuous hedge and/or berm designed to achieve a height of 6-feet upon maturity, a row of trees not more than 35 feet on-center, and shrubs or living groundcover.

(d) Outdoor storage areas, loading docks, and mechanical equipment areas shall be fenced with 75% opaque site obscuring fencing or screened with landscaping between the area and public streets.

(e) One square foot of interior open space or plaza space shall be required for every 5 square feet of gross floor area. The following features shall be included in the open space or plaza area:

1. One linear foot of seating space shall be required for every 30 square feet of open space or plaza space.
2. One tree shall be provided for every 800 square feet of plaza space or open space.
3. Pedestrian scale lighting according to subsection §151.196(H)(7).

(6) *Vehicle and pedestrian connectivity.*

(a) Public streets may be required to be dedicated where needed to improve internal circulation, to connect to neighboring properties or streets, to break up large blocks, or to reduce travel around a site.

(b) At a minimum, 95% of the parking spaces shall be located within 75 feet of a private walkway or public sidewalk.

(7) *Pedestrian-scale lighting.* Pedestrian scale lighting shall be located along all internal walkways and provide a minimum illumination of 1 foot candle. Building entrances shall have a minimum illumination of 5 foot candles. Lighting shall be fully shielded so that no light is emitted at an angle above the horizontal plane as illustrated by the lighting plan. The type of features that should be considered, but are not limited to; street lamps, light fixtures attached to buildings, and light bollards. All pedestrian scale light fixtures shall not exceed a maximum height of 15 feet as measured from grade to the fixture lamp. The lens material for all pedestrian scale lighting shall be constructed of acrylic or similar shatter resistant material as determined by the Director. Glass lenses shall not be used for any pedestrian scale lighting.

(8) *Parking.* The number of parking stalls shall not exceed 125 percent of the minimum number of stalls required. Parking stalls constructed of grass blocks, grasscrete, pervious asphalt or concrete, or similar pervious material shall not be counted in this limit.

(9) *Existing development.* Any existing legal conforming site, through future development, exceeds the square footage threshold contained in § 151.196 (H) shall follow the standards contained in § 151.140 NON-CONFORMING USES AND BUILDINGS.

(10) *Vacancy agreement.* All large scale retail development sites as defined in § 151.196 (H) shall have an abandoned building surety agreement filed with the City. The purpose of the agreement is to ensure a continued attractive business environment in case a building goes vacant. The agreement shall provide measures to maintain the on-site landscaping and exterior of the buildings to their pre-vacancy condition, and to assist in finding a future tenant. Vacancy is defined as a period exceeding 2 years without legal occupancy. The terms of the agreement shall include:

- a. A surety bond equal to 1 percent of the total valuation of the buildings on-site.
- b. If the owner fails to maintain the physical exterior of the property or any building on-site the bond may be used for items including, but not limited to; landscape maintenance, exterior building repairs, parking lot paving, amenities in the public right of way (lighting, benches, landscaping, etc.). If the cost of maintenance exceeds the amount of the bond, the City will bill the owner. Any unpaid amounts will become a lien on the property.
- c. If the owner fails to legally occupy the site the bond may be used as an incentive for prospective tenants including, but not limited to; permit fees, application fees, system development charges, on-site landscaping, and façade improvements.
- d. If the surety bond is expended in any amount, the owner shall provide a new surety bond prior to occupancy by a new tenant. The amount of the bond shall be equal to 1 percent of the value of the building at the time of occupancy.

(11) Environmental Impact. All new large scale retail development as defined in § 151.196 (H) shall be LEED Certified as defined by the U.S. Green Building Council. The terms of approval are as follows:

- a. The applicant shall demonstrate to the Director the extent to which the applicant has complied with the commitment to earn a LEED New Construction Certification rating for a completed project. Demonstration of LEED Certification shall be completed prior to the issuance of final Certificate of Occupancy for the new structure by submitting a report analyzing the extent credits earned toward such rating from the U.S.Green Building Council or another independent entity approved by the Director.
- b. With specific regard to the LEED Stormwater Design Quality Control category, all buildings shall obtain a total of at least two points in this category.
- c. In this section the term "Leadership in Energy and Environmental Design (LEED)" means a green building rating system promulgated by the United States Green Building Council (USGBC) that provides specific principles and practices, some mandatory but the majority discretionary, that may be applied during the design, construction, and operation phases, which enable the building to be awarded points from reaching present standards of environmental efficiency so that it may achieve LEED certification from the USGBC as a "green" building, as such rating system exists on January, 1, 2009.
- d. The USGBC intends to release a revised version of the LEED Green Building Rating System every three years; and the Director shall refer to the most current version of the LEED when reviewing a new building construction permit project or renovation.
- e. The LEED Existing Building rating system shall be used during retrofit projects of existing structures.

Section III: Newberg Municipal Code § shall be amended as follows:

§116. ECONOMIC IMPACT ASSESSMENT FOR LARGE SCALE RETAIL

116.01 Statement of purpose: The city finds that large scale retail development can have adverse impacts on a local economy such as creating a net loss of employment or wages, or exporting dollars from the local area. An economic impact assessment report assists the city to identify any adverse economic impacts and subsequently require mitigation measures for a proposed large scale retail development. It is intended as a tool to ensure that new businesses, in conjunction with existing businesses, provide long term net benefits for the local economy.

116.02. Applicability of requirements: An economic impact assessment report shall be submitted to the Director for all proposed development that meets the following criteria:

- a. New large scale retail over 30,000 square feet gross floor area or 50,000 square feet cumulative gross floor area.
- b. Expansions of large scale retail requiring a Type II or Type III design review.
- c. New tenants to existing large scale retail.

116.03. Process: An economic impact assessment report shall be conducted by an independent consultant chosen at the discretion of the Director. The report shall be paid for by the applicant. The report shall be submitted to the Director for review prior to issuance of a building permit for any large scale retail project, or prior to occupancy for any project not requiring a building permit. If the Director finds that the report meets the criteria in § 116.04 a determination of no adverse economic impact is found. If the Director finds that the criteria have not been met a public hearing will be held by the Planning Commission to review the report and make a determination based on the criteria.

116.04. Contents of report: The economic impact assessment report shall include the following information:

- a. The proposed services and merchandise compared to services and merchandise provided by existing businesses in Newberg.
- b. The anticipated average starting employee wages compared to similar retail positions in Newberg.
- c. The anticipated fiscal impact on municipal services, including police, fire, road maintenance, and stormwater, sewer, and water services.

116.05. No adverse impact criteria: In order to have a finding of no significant adverse impact, the report must show the following criteria are met:

- a. The proposed development will not have an adverse fiscal impact on municipal services, including police, fire, road maintenance, and stormwater, sewer, and water services.

116.06. Mitigation. If the report finds any of the criteria in section 116.04 are not met, the Planning Commission can require mitigation. Conditions may include, but are not limited to:

- a. Requiring additional payment for municipal services
- b. Installation of or upgrades to utility services, such as stormwater detention facilities.
- c. Providing additional transportation facilities, such as sidewalks, traffic signals, bus stops, turn lanes, and street widening.

**Exhibit B to Resolution 2007-235
Findings**

Comprehensive Plan Policy J.1.3. *Developments should respect the natural ground cover of their sites to the extent possible and plans should be made to preserve existing mature, non-hazardous trees in healthy condition.*

Comprehensive Plan Policy M.1.a. *The City will encourage energy-efficient development patterns. Such patterns shall include the mixture of compatible land uses and a compactness of urban development.*

Comprehensive Plan Policy E.1. *Development shall not exceed the carrying capacity of the air, water or land resource base.*

Comprehensive Plan Policy E.2. *Water quality in the Willamette River and tributary streams shall be protected.*

Comprehensive Plan Policy E.4. *The Newberg airshed shall be protected from excessive pollution levels resulting from urbanization.*

Comprehensive Plan Policy E.11. *The City will continue to encourage and support the three R's of recycling (re-use, reduction and recycling).*

Comprehensive Plan Policy H.1.d. *The City shall encourage the development of industries which represent the most efficient use of existing resources including land, air, water, energy and labor.*

Finding: The above policies are intended to ensure a high level of local environmental quality. The proposed amendments help to ensure that the built environment has a limited degree of impact on the natural environment.

Comprehensive Plan Policy F.9. *The City will seek abatement of the aesthetic degradation of the environment resulting from blighted neighborhoods, indiscriminate waste disposal, offensive outdoor storage.*

Comprehensive Plan Section J. Urban Design, Goal 1: *To maintain and improve the natural beauty and visual character of the City.*

Comprehensive Plan Policy J.1.c. *Non-residential uses abutting residential areas should be subject to special development standards in terms of setbacks, landscaping, sign regulations, building heights and designs.*

Comprehensive Plan Policy J.1.g. *Community appearance should continue to be a major concern and subject of a major effort in the area. Street tree planting, landscaping, sign regulations and building improvements contribute to community appearance and should*

continue to be a major design concern and improvement effort.

Comprehensive Plan Policy J.3.a. *Where commercial development is permitted, such development should be subject to design requirements for ingress and egress, landscaping and sign control.*

Comprehensive Plan Policy J.4.a. *The City will require buffering and landscaping to minimize impacts between housing and potentially conflicting uses.*

Comprehensive Plan Policy K.8.a. *Adopt transportation and land use design standards that emphasize visual and aesthetic quality.*

Finding: The above policies stress maintaining the aesthetics of the community. The proposed amendments achieve these goals by requiring that vacant buildings and landscaping on development sites are maintained to pre-vacancy conditions.

NEWBERG DEVELOPMENT CODE § 151.205 DESCRIPTION AND PURPOSE.

- (A) *It is recognized that certain types of uses require special consideration prior to their being permitted in a particular district. The reasons for requiring such special consideration involves, among other things, the size of the area required for the full development of such uses, the nature of the traffic problems incidental to operation of the use, the effect such uses have on any adjoining land uses and on the growth and development of the community as a whole.*
- (B) *All uses permitted conditionally are declared to be possessing such unique and special characteristics as to make impractical their being included as out-right uses in any of the various districts herein defined. The authority for the location and operation thereof shall be subject to review and the issuance of a conditional use permit. The purpose of review shall be to determine that the characteristics of any such use shall be reasonably compatible with the type of uses permitted in surrounding areas, and for the further purpose of stipulating such conditions as may be reasonable so that the basic purposes of this code shall be served. Nothing construed herein shall be deemed to require the hearing body to grant a conditional use permit.*

Finding: Very large retail buildings possess a number of unique characteristics that warrant special review. The buildings are much larger, posing much greater aesthetic and economic presences in the community. They generate large volumes of traffic, noise, lighting, debris, and so forth in a concentrated area. Each development is unique and can have varied impacts on the community. Because of this, it is appropriate to require conditional use permits prior to construction of any such uses. Under conditional use review, additional conditions may be added to address specific issues.

Findings: The vacancy agreement will ensure that the on-site landscaping and exterior of the building will be maintained and not become an eyesore to the community. The agreement will also provide funds to assist prospective tenants to occupy the site, and subsequently bring the site

in conformance with Development Code requirements.

Findings: The City currently does not have Municipal Code requirements regarding the economic impact of a prospective business. This text amendment will ensure that the local municipal budget is not burdened by new large scale retail development.